

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7212

Petition of H.W. Ventures, L.C., for a certificate)
of public good, pursuant to 30 V.S.A. § 248(j),)
authorizing the installation and operation of a)
temporary wind measurement tower and)
associated equipment in Milton, Vermont)

Order entered: 11/16/2006

I. INTRODUCTION

This case involves a petition filed on July 31, 2006, by H.W. Ventures, L.C. ("HWV"), requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248(j) authorizing the installation and operation of a temporary wind-measurement tower and associated equipment on its property in Milton, Vermont ("Project").

On July 31, 2006, HWV filed the petition, prefiled testimony, and proposed findings with the Public Service Board ("Board"), the Vermont Department of Public Service ("Department") and the Vermont Agency of Natural Resources ("ANR"), as specified in 30 V.S.A. § 248(a)(4)(C), pursuant to the requirements of 30 V.S.A. § 248(j)(2).

On August 8, 2006, the Board requested that HWV submit additional information regarding the proposed Project prior to processing the application. On August 17 and September 1, 2006, HWV filed supplemental information in response to the Board's request.

Notice of the filing in this Docket was sent on September 14, 2006, to all parties specified in 30 V.S.A. § 248(a)(4)(C) and all other interested persons. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 must file their comments with the Board on or before October 19, 2006. Notice of the filing, with a request for comments on or before October 19, 2006, was also published in *The Burlington Free Press* newspaper on September 18 and 25, 2006, and in the *Milton Independent* newspaper on September 21 and 28, 2006.

The Department filed a Determination letter under 30 V.S.A. § 202(f) on September 28, 2006. The letter stated that the proposed Project is consistent with the Vermont Twenty-Year Electric Plan for the State.

On October 18, 2006, Kristian Preylowski, a resident of Milton, e-mailed comments on the proposed Project to the Board. The comments raise many concerns regarding wind farms and development of natural areas in general.¹ However, the comments do not raise any significant issues under the criteria of 30 V.S.A. § 248 specific to the temporary wind measurement tower proposed here.

On October 19, 2006, the Department filed a letter with the Board stating that the petition raises no significant issues with respect to the criteria of 30 V.S.A. § 248. The Department's letter also requests additional testimony from HWV regarding the economic benefit of the proposed Project, and sets forth some conditions that it recommends be included in any order granting approval of the proposed Project.

On October 19, 2006, ANR filed a letter with the Board stating that the petition raises no significant issues with respect to the criteria of 30 V.S.A. § 248. ANR also requests, in the letter, that the conditions proposed by the Department be included in the order.

On October 24, 2006, HWV filed with the Board supplemental prefiled testimony and revised proposed findings and certificate of public good, in response to the Department's letter.

No other comments have been filed.

The Board has determined that the proposed construction will be of limited size and scope and that the petition and prefiled testimony have effectively addressed the issues raised with respect to the substantive criteria of 30 V.S.A. § 248. Consequently, we find that the procedures authorized by Section 248(j) are sufficient to satisfy the public interest, and no hearings are required.

1. The comments do not, however, state that the resident is an adjoining landowner of the proposed Project or describe the resident's proximity to the proposed Project.

II. FINDINGS

1. HWV proposes to erect a temporary wind-measurement tower on a half-acre parcel it owns near the summit of Georgia Mountain in Milton, Vermont. Zimmerman pf. at 2 and Exh. A.
2. Access to the tower location will utilize an existing private road to an existing cell tower and approximately 750 feet of an existing all-terrain-vehicle trail which runs along the ridgeline. *Id.*
3. The wind-measurement tower includes a guyed, galvanized steel, 6-inch diameter tubular tower, up to 132 feet (40 meters) in height, with anemometers and direction sensors mounted at several levels. Wind speed, wind direction, air temperature, and other meteorological parameters are recorded on a battery-powered data recorder. Electric power to the tower is provided by batteries that are recharged with a photovoltaic panel mounted on the tower at approximately 10 feet above ground level. Zimmerman pf. at 2.
4. The equipment will be transported to the site using a four-wheel-drive vehicle, ATV or snowmobile over existing roads and trails to reduce the amount of clearing required. The temporary wind-measurement tower is assembled in ten-foot sections laid out along the ground. The meteorological sensors, data recording equipment, and guy wires are attached to the assembled tower sections. Guy anchors are secured by either screwing them into the ground or using "rock anchors" depending on soil conditions. No concrete or other permanent above ground alterations are necessary for the installation of the measurement tower. The tower is then winched in to a vertical position and the guy wires are tensioned. Zimmerman pf. at 3 and Exh. B.
5. The installation process will require only the amount of clearing necessary for placement of the guy wires. *Id.*
6. Wind data and meteorological data will be continuously measured with summary statistics recorded over 10 minute or longer periods and stored electronically in the data recorder at the base of the wind-measurement tower. Every several days, the data recorder will "call out," using its internal cell phone, to an Internet Service Provider so that the stored data can be sent to HWV via an email attachment. Zimmerman pf. at 4-5.

7. Measurement will continue for a period of up to five years to establish the long-term annual mean wind speed estimates. A shorter period may be acceptable if a good correlation exists between a long-term reference station nearby and the measurement tower. *Id.*

8. Upon termination of the wind-evaluation period, the tower hardware and recording equipment will be lowered to the ground, disassembled and removed from the site. If guy anchors cannot be removed, they will be sawed off below grade, leaving the site and access trail with no man-made equipment visible. Vegetation will continue to grow, and over time the site will be restored to close to its original condition. *Id.* at 5.

9. The cost of the equipment and installation for the proposed Project is approximately \$15,000. *Id.*

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

10. The proposed Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by Findings 11-13, below.

11. The proposed Project is located entirely on privately owned property, will not provide electricity and involves no transmission or distribution lines. Zimmerman pf. at 6.

12. The Chittenden County Regional Planning Commission reviewed the proposed Project and has raised no concerns regarding the proposed Project. It has also waived the 45-day advance notice requirement for reviewing the project as provided by 30 V.S.A. § 248(f). Letter from Chittenden County Regional Planning Commission filed with the Board on June 21, 2006.

13. The Town of Milton Planning Commission reviewed the proposed Project and has raised no concerns regarding the proposed Project. It has also waived the 45-day advance notice requirement for reviewing the project as provided by 30 V.S.A. § 248(f). Letter from Town of Milton Planning Commission filed with the Board on June 20, 2006.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

14. The proposed Project will not require or contribute to electrical service. It could lead in the future to a petition for a wind farm that would be available to provide renewably-produced electricity to users in Vermont. Zimmerman pf. at 6-7.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

15. The proposed Project will not be connected to the electric system and therefore will not adversely affect system stability and reliability. Zimmerman pf. at 7.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

16. If the site is determined to possess the wind resources required for a wind generation facility, that information may provide an economic benefit by assisting the State in determining in the future whether to approve any proposed development of wind powered generation at the site. Zimmerman pf. at 7 and supp. pf. at 2.

17. The installation of the wind measurement tower and equipment will have a small economic benefit to the state, due to the temporary job creation resulting from the permitting, installation and monitoring of the wind measurement tower and equipment and the evaluation of the data generated. *Id.*

**Aesthetics, Historic Sites, Air and
Water Purity, the Natural Environment and Public****Health and Safety**

[30 V.S.A. § 248(b)(5)]

18. The proposed Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by Findings 19-48, below, which are based on the criteria specified in 10 V.S.A.

§§1424a(d) and 6086(a)(1) through (8), 8(A) and (9)(K).

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)]

19. The proposed Project is not located on or near any Outstanding Resource Waters. Zimmerman pf. at 7.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

20. The proposed Project will not result in undue water or air pollution. This finding is supported by Findings 21-23, below.

21. The proposed Project does not involve any emissions and will not produce any noise. Zimmerman pf. at 8.

22. The proposed Project will involve only limited soil disturbance in order to anchor the tower's guy wires. *Id.*

23. The proposed Project will use existing roads and trails for access. *Id.*

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

24. The proposed Project is not located in a headwaters area. *Id.*

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

25. The proposed Project as designed meets any applicable health and environmental conservation regulations regarding the disposal of wastes, and does not involve the injection of waste materials or any harmful or toxic substances into ground water or wells. All construction debris produced during construction of the proposed Project will be disposed in accordance with the law. Zimmerman pf. at 8-9.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

26. The proposed Project will not require the use of water. *Id.* at 9.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

27. The proposed Project will not be located in a floodway. *Id.*

Streams

[10 V.S.A. § 6086(a)(1)(E)]

28. The proposed Project is not located on or adjacent to any streams. *Id.*

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

29. The proposed Project is not located near any shorelines. *Id.*

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

30. The proposed Project is in compliance with the rules of the Water Resources Board relating to significant wetlands since it does not affect a significant Class 1 or 2 wetland. *Id.* at 10 and Exh. C.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

31. The proposed Project will not result in unreasonable air pollution because it will not involve any emissions from construction activity or operation. Zimmerman pf. at 8.

Sufficiency of Water and Burden on

Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)(3)]

32. The proposed Project will not require the use of water and, therefore, will not place a burden on any existing water supply. *Id.* at 10.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

33. The proposed Project will not result in unreasonable soil erosion or reduce the ability of the land to hold water. This finding is supported by Findings 34-35, below.

34. The proposed Project will involve only limited soil disturbance in order to anchor the tower's guy wires. Zimmerman pf. at 10-11.

35. The proposed Project will use existing roads and trails for access. *Id.*

Traffic

[10 V.S.A. § 6086(a)(5)]

36. The proposed Project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. This finding is supported by Finding 37, below.

37. During the one-to-two day construction period, a utility van will bring the meteorological equipment, the tower erection equipment and an ATV to the access road. Zimmerman pf. at 11.

Educational Services

[10 V.S.A. § 6086(a)(6)]

38. The proposed Project will have no impact on the ability of the involved municipality to provide educational services. *Id.* at 11.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

39. The proposed Project will not unreasonably burden the ability of any involved municipalities to provide municipal services. *Id.* at 11-12.

**Aesthetics, Historic Sites or Rare
and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

40. The proposed Project will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by Findings 41-44, below.

41. Although the portion of the proposed Project above the tree canopy will be visible, the six-inch diameter tower will be difficult to distinguish against the sky from more than one or two miles away. Zimmerman pf. at 12 and Exh. D.

42. The weathered galvanized tubing and gray guy wire will blend well with either blue or cloudy sky backgrounds. *Id.*

43. The proposed Project will be less visible than the existing cellular communications tower located in the vicinity. *Id.* at 12-13.

44. The proposed Project will not impact any known historic sites or natural areas. *Id.* at 13.; Cross pf. at 3-4.

**Necessary Wildlife Habitat and
Endangered Species**

[10 V.S.A. § 6086(a)(8)(A)]

45. The proposed Project will not have an undue adverse impact on any necessary wildlife habitat or known endangered species sites. This finding is supported by Findings 46-47, below.

46. Since the measurement tower is relatively low, and will not be lighted, no significant impacts to birds are expected from this installation. Zimmerman pf. at 14.

47. An environmental review of the proposed Project area found no state or federal rare, threatened or endangered species at the site. *Id.* at Exh. D.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

48. The proposed Project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to such facilities, services, or lands. Zimmerman pf. at 14.

Consistency with Resource Selection**Least-Cost Integrated Resource Plan**

[30 V.S.A. § 248(b)(6)]

49. HWV does not distribute or transmit electricity for use by the public. Therefore, it is not obligated to prepare and submit for approval an integrated resource plan. *See*, Docket 7082, Order of April 26, 2006, at 54.

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

50. The proposed Project is consistent with the 20-Year Electric Plan. Letter of determination from Department filed with the Board on September 29, 2006.

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

51. The proposed Project is not located on or near any "Outstanding Water Resource" as designated by the State of Vermont Water Resources Board. Zimmerman pf. at 15.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

52. The proposed Project will not be served by any transmission facilities, existing or planned. *Id.*

IV. CONCLUSION

Based upon all of the above evidence, the construction is of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248(j); and the proposed Project will promote the general good of the state.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of a temporary wind measurement tower and associated equipment on its property in Milton, Vermont, by HWV, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and a certificate of public good to that effect shall be issued in this matter with the following conditions:

(1) The wind measurement tower and associated equipment shall be removed from the site within five years of the date of the Certificate of Public Good issued in this docket.

(2) Prior to filing a petition for approval of a wind generation facility at this site, HWV shall consult with the Department and ANR. Any such petition shall include a statement by HWV that it has worked in good faith with the Department and ANR to address the need for information prior to review of any proposed project under 30 V.S.A. § 248.

Dated at Montpelier, Vermont, this 16th day November, 2006.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 16, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.